IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2439 of 2001

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SUSHILABEN PRAHLADBHAI PATEL & 3 - Appellant(s)
Versus
RANJITBHAI GHANSHYAMBHAI THAKORE & 2 - Defendant(s)

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Appearance :
MR SANDIP C SHAH for Appellants
NOTICE SERVED for Respondents : 1 - 2.
MR SUNIL B PARIKH for Respondent : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MR.JUSTICE C.K.BUCH

Date : 27/11/2007

ORAL JUDGMENT (Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

This Appeal preferred under Section 173 of

the Motor Vehicles Act, 1988 by the claimants in Motor Accident Claim Petition No. 248 of 1986, arises from the judgment and award dated 8th August, 2000 passed by the Motor Accident Claims Tribunal, Ahmedabad[hereinafter referred to as “The Tribunal”]. By impugned Award, the appellants-claimants have been awarded compensation in the sum of Rs.4,95,000/- with interest at the rate of 12% per annum and cost.

The appellants-claimants are the widow and the married daughters of the deceased Prahladbhai Patel. On 26th May, 1994, the said Prahladbhai Patel was travelling in a motor car bearing registration no. GJ-1-R-2555 belonging to his son-the respondent no.2 and driven by the respondent no.1 from Ahmedabad to Vadodara. At around 9.00 a.m., the driver lost control of the vehicle, the vehicle collided with a tree causing serious injuries to the passenger. The said Prahladbhai Patel died of the injuries received in the said accident. The claimants filed the above-referred Petition No. 248 of 1996 before the Tribunal for compensation in the sum of Rs. 25,00,000/-. According to the claimants, the

deceased was of 59 years of age, was educated, had been a Professor and was receiving pension, had written several books and was receiving royalty, was engaged in several social activities, was Member, President etc. in several institutions, was a partner in several business firms and was receiving share from the profit. He was expected to live a long life and carry on his social and educational activities. In support of the claim, the claimant no.1-the widow, examined herself and a Chartered Accountant-one Ashokbhai Patel. The claimants also produced Income-tax returns filed by the deceased for couple of years before his death and one filed on behalf of the deceased, after his death. The Tribunal, considering the evidence on record and the evidence of the Chartered Accountant, assessed the annual loss of income on account of the death of the deceased to the extent of Rs. 1,20,000/-. From that, the Tribunal has deducted 1/3rd amount which the deceased would have spent on himself. The annual dependency factor has been calculated at Rs. 80,000/-. Considering the age of the deceased, a multiplier of 6 has been adopted. To the total amount of dependency factor,

the Tribunal has added a sum of Rs. 15,000/- for loss of consortium and expectancy of life. Feeling aggrieved, the claimants have preferred the present Appeal for enhancement of the amount of compensation.

Mr.Shah has appeared for the appellants and assailed the judgment of the Tribunal. He has submitted that the claimants have produced the Income-tax returns of the deceased for three years in a row; Tribunal ought to have accepted the figures of income of the deceased reflected in the Income-tax returns. The Tribunal ought to have considered the increase in income in future to compute the average income of the deceased. The Tribunal failed to take into consideration the income of royalty received by the deceased. The multiplier of 6 adopted by the Tribunal is conservative and atleast the multiplier of 8 ought to have been adopted. Under the head, “loss of consortium”, the widow ought to have been awarded atleast a sum of Rs. 50,000/-.

Mr. Shah has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Lata**

Wadhwa and others Vs. State of Bihar and others [2001 ACJ 1735]. He has vehemently argued that the appellant no.1-widow of the deceased was entitled to a sum of Rs. 50,000/- by way of loss of consortium. He has submitted that in the above-referred matter of Lata Wadhwa and Ors., the Hon'ble Court had awarded compensation in the sum of Rs. 50,000/- for loss of consortium. We are unable to agree with this argument. In that matter, it was a gross case. In a function organised by the employer, in a fire accident, some 60 persons, the employees and their relatives were killed and many more sustained burn injuries. In case of death of the housewives who had no independent income of their own, the Hon'ble Court was of the opinion that the compensation in the sum of Rs. 25,000/- for loss of consortium was inadequate and was raised to Rs. 50,000/-. The above judgment was followed by the Delhi High Court in the matter of **Kamla Devi Vs. Government of NCT of Delhi and Anr.** [2005 ACJ 216]. We see no comparison in the case before the Hon'ble Supreme Court or the Delhi High Court and the case before us.

Mr. Parikh has contested the Appeal. He has submitted that the Tribunal has rightly calculated Rs. 1,20,000/- as loss of income. The dependency factor calculated by the Tribunal is on a higher side. He has submitted that the deceased was a teacher in a college and had retired from service; he was in receipt of pension; after his death, the widow continued to receive the family pension; the royalty that was received by the deceased on the sale of the books written by him would continue to be received even after his death; the income of royalty, therefore, had rightly not been included while computing the loss of income. He has submitted that the income from partnership received by the deceased is not explained. Considering the evidence on record, major part of the income from partnership firms is the interest and the remuneration, and not the share in the profit. The income on interest and the remuneration has not been explained by the claimants. Considering the fact that the deceased was a retired person, there was no likelihood of increase in income in future. The Tribunal has rightly not taken into consideration the possible increase in the future

income.

We have perused the copies of the Income-tax returns produced on record of the matter and the various heads under which the deceased had earned his income. It is apparent that major part of his income was from capital gain and royalty. The amount on royalty, interest on investment, capital gain etc., have rightly not been considered for computation of loss of income. The amounts paid by the partnership firms have not been explained by the claimants nor has it come on the record whether the accounts were settled after the death of the deceased Prahladbhai Patel. In our opinion, the Tribunal has been liberal in computing annual loss of income at Rs. 1,20,000/-. There is no possibility of adding any amount to it. Considering the age of the deceased, the 6 years' multiplier adopted by the learned Tribunal appears to be adequate. The amount of Rs. 15,000/- awarded for loss of consortium and expectancy of life also does not warrant interference.

For the aforesaid reasons, we see no substance in this Appeal. The Appeal is dismissed with cost.

[MS. R.M. DOSHIT, J.]

[C.K. BUCH, J.]

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